PATENT
Customer No. 22,852
Attorney Docket No.: 05725.1234-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Florence TOURNILHAC	)	
	)	
Application No.: 10/632,897	)	Group Art Unit: 1616
	)	
Filed: August 4, 2003	)	Examiner: Melissa Mercier
	)	
For: COMPOSITION GELLED WITH A DEXTRIN ESTER	)	Confirmation No.: 7929
	)	
	)	
	)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENT

In an Office Action dated April 19, 2006, the Examiner requires restriction between certain groups of claims as set forth below as well as various elections of species. This paper is filed in response to those requirements. The period for response to the Office Action has been extended three months to August 19, 2006, by the Petition for Extension of Time for three months and fee filed concurrently herewith.

Restriction Requirement

The Examiner requires restriction under 35 U.S.C. § 121 between the following groups of claims:

Group I: Claims 1-88, drawn to a composition, classified in class 424, subclass 400; and

Group II: Claims 89-102, drawn to a method of use, classified in class 424, subclass 401.

See Restriction Requirement at page 2.

Applicant respectfully traverses the restriction requirement, as it is set forth above and on pages 2- 7 of the Restriction Requirement. However, to be fully responsive, Applicant elects, with traverse, the subject matter of Group I, claims 1- 88.

The Examiner states that Group I is distinct from Group II. *See* Restriction Requirement at 7. The Examiner asserts that Group I is distinct from Group II because the composition of Group I has utility other than cosmetic composition, such as lubricants. Applicants respectfully refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P instructs the Examiner as follows:

> If the search and examination of an entire application can be made **without serious burden**, the Office **must** examine it on the merits, even though it includes claims to independent or distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining Groups I and II together would constitute a serious burden. Additionally, Applicants respectfully submit that examining the composition and a process of using the composition should not impose a serious burden on the Examiner. Indeed, a search for the composition should overlap the search for the process given the common classification that will occur due to the

election of species discussed below. Finally, Applicants submit that no serious burden would exist in light of the requirement of rejoinder. *See* M.P.E.P. § 821.04. Accordingly, it is unclear what burden is on the Examiner to examine all groups together, and Applicants respectfully request withdrawal of the restriction requirement.

Election of Species

The Examiner also requires three elections of species:

(1) The Examiner requires an election of one species for formula (1) recited in claim 7. See page 4 of the Office Action.

(2) The Examiner requires an election of the species of oils. Specifically, the Examiner election of one of the categories of oils in claim 60. *Id.*

(3) The Examiner requires an additional election of the form of the claimed invention. Specifically, the Examiner requires election of one of the forms in claim 85. *Id.* Per a telephone conference with the Examiner on May 17, 2006, this election of species is required for Group I, not Group II as indicated in the Office Action. Applicant thanks the Examiner for this clarification.

Accordingly, Applicant elects, with traverse:

(1) the species of formula (1) wherein R_1 is R-CO-, R_2 is R-CO-, and R_3 is H;

(2) C_4 to C_{22} fatty acid ester oils; and

(3) the lipstick form.

Applicants disagree with the election requirement and remind the Examiner that if she chooses to maintain the election of species requirement, Applicants expect her, if

the elected species is found allowable, to continue to examine the full scope of claims 1-88 to the extent necessary to determine the patentability of these pending claims, *i.e.*, extending the search to a reasonable number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

Conclusion

In view of the foregoing remarks, Applicant requests timely examination of the claims. Please grant any extensions of time required to enter this response and charge any required fees not otherwise provided for to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: July 27, 2006

By: 
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